

to the promise made by the plaintiff to her late husband for the benefit of the defendant.

There can be no doubt, that the plaintiff always admitted she had *intended* to give a life-estate, at least, in her property to the defendant. Much testimony has been collected in relation to what the plaintiff had said *since* the death of her husband, as to the manner in which she *intended* to provide for the defendant. But the greater part of these declarations are proved to have been made subsequently to that period of time when her mental decay had commenced; and therefore, so far as they may have been introduced as evidence of the affirmance of an equivocal or voidable promise, deserve little attention. But it is of no kind of importance to ascertain what were, at any time, the limits of the plaintiff's intended *bounty* to the defendant; because, as to that her will is the law. Therefore, all the testimony which relates to her declarations of *benevolent intentions*, may be at once put out of the case.

The question here is, not what the plaintiff at any time kindly intended; but whether she had made such a promise as is alleged, and what have been her admissions and acknowledgments of that promise, if any. As to which, it appears, that when the plaintiff was called on, at a time about the commencement of her intellectual decay, to say whether she had actually made any such promise to her late husband in favour of the defendant, or not; and whether any thing was then said about her giving to the defendant any thing less than an absolute estate of inheritance? she distinctly acknowledged, that she had made such an unconditional promise; and that nothing was then said about an estate for life. And the plaintiff has since made similar acknowledgments as to the nature and extent of her promise. The circumstance, that one of her children had been cut off from any participation in the father's property, because of her having promised to provide for such child, was calculated, from its very interesting nature, to make a strong and lasting impression, and likely to be distinctly recollected even after her mind had fallen into a great degree of decay.(q)

These acknowledgments of the promise are mainly corroborated by the circumstances of the late *John C. Owings'* family at the time of his death; and the disposition which he made of his estate by his will. His other children, there spoken of, having had estates